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REMARKS/ARGUMENTS

Claims 51-80 are pending in this application, and all other claims were previously canceled. For at least the reasons stated below, Applicants assert that all claims are in condition for allowance.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 51-80 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Odom et al. (U.S. Patent No. 6,058,379) in view of Purcell (U.S. Patent No. 6,081,789). Applicants respectfully oppose these rejections. The cited references, alone or in combination, fail to teach or suggest all of the claim limitations as required by MPEP § 2143. For at least this reason, the Examiner's § 103 rejections are unsupported by the art and should be withdrawn.

(a) Checking Credit Based on Terms Form

The present invention provides for, *inter alia*, a virtual trade financial framework wherein the credit of a buyer is checked with a third party based on a terms form indicating at least one of the terms and conditions of the buyer. The cited references fail to teach this limitation, which is recited by claims 51-80.

Examiner acknowledges that Odom does not show the step of "checking credit," see Office Action dated 6/14/2004, p. 2, but instead asserts that the Specification at pages 1-2 describes "checking credit, a third party local bank, and invoice documentation" as "admitted prior art." *Id.* at page 4. Applicants assert that such reliance on the Specification fails to establish a *prima facie* case of obviousness as required by MPEP § 2143 because (1) nowhere does the Specification refer to any of its teachings, including pages 1-2, as "prior art," which is a prerequisite for Examiner to rely on these teachings as "admitted prior art," see MPEP § 2129, and (2) even assuming *arguendo* pages 1-2 of the Specification constitute "prior art," the teachings therein do not teach or suggest the claim limitation of "checking a credit."

(1) The Specification Does Not Identify "Prior Art"

With respect to MPEP § 2129, an Examiner is only authorized to rely on teachings in the Specification as prior art when they are identified as "prior art." MPEP § 2129 ("Where the specification identifies work done by another as 'prior art,' the subject matter so identified is

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treated as admitted prior art.”). There is no other disclosed mechanism for an examiner to deem content of a specification “admitted prior art” as Examiner has done in the present case. In the present case, however, nowhere on pages 1-2 of the Specification, nor anywhere else in the Specification, is any teaching identified as “prior art.” Accordingly, Examiner has failed to establish that any teachings in the Specification regarding checking credit or third party local banks is valid art for the purposes of a 35 U.S.C. § 103 rejection. Accordingly, Examiner has failed to establish a *prima facie* case of obviousness.

(2) The Specification at Pages 1-2 Does Not Teach or Suggest Checking Credit as Claimed

Even assuming *arguendo* pages 1-2 of the Specification constitute “prior art,” the teachings therein to not teach or suggest the claimed limitation of “checking a credit.” The claims recite, “checking a credit of at least one of the buyers with a third party based on the terms form” wherein the terms form indicates “at least one of the terms and conditions of at least one of the buyers.” Not only do pages 1-2 of the Specification fail to teach or suggest this limitation, but the cited references fail to do so as well: *Odom* fails to teach or suggest checking credit (as acknowledged by Examiner at page 2 of the Office Action dated 6/14/2004) and *Purcell* fails to teach or suggest checking credit (as evidenced by the fact that *Purcell* makes no reference to credit whatsoever and only describes managing inventory information).

The Specification, at pages 1-5, discusses the use of a letter of credit, which is an engagement by a bank made at the request of a customer, such as a buyer. “After a buyer and seller have made an agreement for the sale of goods, the buyer instructs its bank to open an L/C in favor of the seller.”

First, this teaching fails to teach or suggest the claim limitation of “checking a credit of at least one of the buyers” because opening a letter of credit and checking credit are distinct exercises. A bank typically opens a letter of credit for an existing customer, which extends credit to that customer, because the bank is already familiar with the sufficiency of the customer’s credit. In stark contrast, the process of “checking credit” is exemplified by ascertaining a customer’s credit rating with a credit bureau. Note, the process of checking credit does not actually extend credit, whereas the process of opening a letter of credit does. These processes

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are distinct, and the Specification at pages 1-2 does not disclose checking credit but rather extending credit.

Next, the present claimed invention recites checking credit based on the terms form, wherein the terms form indicates a term or condition of the buyer. There is no suggestion or motivation—either in the cited references or asserted by Examiner—to modify a bank's opening a letter of credit by involving the terms or conditions of a specific agreement. The Specification at pages 1-2 merely states, "after a buyer and seller have made an agreement for the sale of goods, the buyer instructs its bank to open an L/C in favor of the seller." This fails to teach or suggest that the bank possess or is even aware of the specific terms and conditions of the agreement, only that the bank is extending credit to the buyer.

Finally, the present claimed invention clearly recites checking credit with a third party, such that the third party is distinct from the claimed "bank." In other words, whereas the claimed invention recites checking credit with a third party—such as a credit bureau—that third party is not a bank, which is subsequently claimed as the recipient of secondary documents. In contrast, the Specification at pages 1-2 describes a bank opening the letter of credit. This description clearly fails to teach or suggest a third party, rather than a bank, checking credit.

(b) Providing Seller With the Terms Form and an Indication of Available Credit

Claims 51-80 further recite "providing at least one of the sellers with the terms form and an indication as to available credit of at least one of the buyers." *Odom* and *Purcell* fail to teach or suggest this limitation. Moreover, in the Amendment dated March 26, 2004, at which time the independent claims were rejected solely on *Odom*, Applicants identified this deficiency. However, rather than address Applicants' argument on this point, Examiner merely states that Applicants' arguments are moot in view of the new ground of rejection. Yet the new ground of rejection merely adds *Purcell* to the *Odom* reference; *Purcell* clearly fails to discuss providing a seller with a terms form and an indication of available credit of a buyer. Thus, it is unclear to Applicants where Examiner believes this limitation is taught or suggested.

To the extent the rejection relies on *Odom* to teach or suggest this limitation, Applicants respectfully traverse: (1) *Odom* clearly fails to teach or suggest this limitation, as described in more detail below, and (2) Examiner has not identified where this limitation is allegedly taught

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nor has Examiner addressed Applicants previous arguments demonstrating such failing of *Odom*, and therefore, Examiner has therefore not established a *prima facie* case of obviousness.

Odom discloses "a method for networked exchange" involving "the electronic exchange of goods and services via an electronic network..." See, abstract; col. 1, lines 7-10. Specifically, the reference describes an eight-step capability to enable operation of the exchange. See, abstract; col. 3, lines 13-15. However, the limitation of providing a seller with a terms form and an indication of available credit of a buyer is not taught by any of these eight steps nor anywhere else in the *Odom* reference. Although one of the steps of the *Odom* reference describes processing information generated by the potential purchaser, this step describes processing information generated by a potential purchaser's bid (see step 220) and not about a purchaser's credit. See, col. 6, lines 27-29. Similarly, at step 515, *Odom* describes how a bid is transmitted to the seller or exchange by electronic mail or messaging. See, col. 8, lines 17-19. However, this teaching fails to specify transmitting a buyer's terms and conditions and makes no mention of the buyer's credit. Nowhere does *Odom* teach or suggest providing a seller with a terms form and an indication of available credit of a buyer as recited in claims 51-80.

Even assuming Examiner is relying on pages 1-2 of the Specification, which is not formally identified as part of the basis of the 35 U.S.C. § 103 rejection, such teaching clearly does not discuss providing terms forms to a seller, nor does it teach or suggest providing an indication of a buyer's credit. As previously described, that teaching merely discloses opening a letter of credit in favor of a seller, which is demonstrably distinct from providing an indication of credit. Moreover, such teaching has not been identified or established as "prior art."

(c) Buyer Accesses Secondary Documents Via Bank

Claims 51-80 also recite the buyer accessing secondary documents via a bank. The secondary documents are recited as being from the group of insurance certificates, inspection certificates, certificates of origin, invoices/declarations, counselor's invoices, sanction and boycott declarations, packing lists, weight lists, lab test reports, and beneficiary certificates. *Odom* and *Purcell* fail to teach this limitation.

In the *Odom* reference, step 230 describes clearing a negotiation with a bank and step 835 refers to a settlement phase. See, col. 6, lines 64-65; col. 10, lines 28-35. However, these steps, and the rest of the *Odom* reference, fail to teach or suggest a buyer accessing secondary

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documents via a bank. Moreover, Nowhere does *Purcell* even mention sending such documents to a bank or having the documents accessed by a buyer via the bank. Accordingly, the combination of *Odom* and *Purcell* fail to teach or suggest this limitation as recited in claims 51-80.

(d) Combined Purchase Order Proforma Invoice

Dependent claims 58, 68, and 78 recite "wherein the initiation and payment documents include a combined purchase order proforma invoice." Nowhere do *Odom* and *Purcell* teach or suggest proforma invoicing, nor do the references even mention such invoicing. Moreover, Examiner has not indicated where this limitation is allegedly taught or suggested. Accordingly, Examiner has not established a *prima facie* case of obviousness as required by MPEP § 2143, and Applicants request removal of this rejection.

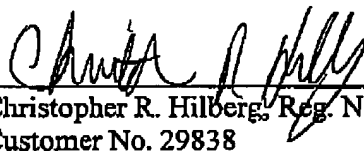
CONCLUSION

Applicants submit that all pending claims are allowable and respectfully request that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (612) 607-7386.

If any fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Reference 60021-339701).

Respectfully submitted,

By


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